

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL W. TWEEDY,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

Case No. 2:23-cv-01239-JDP (HC)
ORDER

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that it fails to state a cognizable habeas claim. I will give him leave to amend. I will also grant his petition to proceed *in forma pauperis*. ECF No. 2. Petitioner has recently filed a request for ruling, ECF No. 7, which I will deny as moot.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner argues that the state courts violated his rights by rejecting his petition for resentencing relief under California Senate Bill 81. ECF No. 1 at 4. This claim, based entirely on

1 state law, cannot justify federal habeas relief. *Estelle v. McGuire*, 502 U.S. 62, 67 (1991)
2 (“[F]ederal habeas corpus relief does not lie for errors of state law.”) (quoting *Lewis v. Jeffers*,
3 497 U.S. 764, 780 (1990)). Even if this claim were recast as a due process violation it would still
4 fail. See *Langford v. Day*, 110 F.3d 1380, 1381 (9th Cir. 1996).

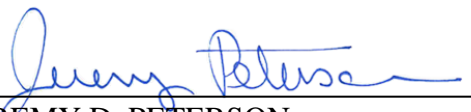
5 Petitioner may file an amended petition that explains why he should still be allowed to
6 proceed.

7 It is ORDERED that:

- 8 1. Petitioner’s application to proceed *in forma pauperis*, ECF No. 2, is GRANTED.
- 9 2. Petitioner’s request for ruling, ECF No. 7, is denied as moot.
- 10 3. The Clerk of Court is directed to send petitioner a federal § 2254 habeas form.
- 11 4. Within thirty days of this order’s entry, petitioner may file an amended habeas
12 petition. If he does not, I will recommend this action be dismissed.

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14 IT IS SO ORDERED.

15 Dated: September 28, 2023

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17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE
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